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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(S): Dakshi AGRAWAL et al.

GROUP ART UNIT: 2145

APPLICATION NO.: 10/713,306

EXAMINER: GOODCHILD, William J.

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FOR: **METHOD AND APPARATUS TO ESTIMATE CLIENT PERCEIVED RESPONSE TIME**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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APPELLANTS' REPLY BRIEF

This Reply Brief is submitted pursuant to 37 C.F.R. §41.41 in response to the Examiner's Answer mailed on June 20, 2008, in the above-identified application.

1. The Examiner misapplies *In re Van Geuns*

The Appellant in *In re Van Geuns*[1] attempted to persuade the Court that further limitations from the specification should be read into the claim, namely that a "uniform magnetic field" should be read to further limit the claim to include Nuclear Magnetic Resonance (NMR) or Magnetic Resonance Imaging (MRI) apparatus. The Court in *In re Van Geuns* held "limitations are not to be read into the claims from the specification".

Appellants do not disagree with the holding of *In re Van Geuns*. Appellants contend that *In re Van Geuns* is not applicable to Appellants' description of terms recited in Appellants' claims.

[1] *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is well settled that during examination claims must be given their broadest reasonable interpretation in light of the specification, *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), and that claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their broadest reasonable interpretation, *In re Okuzawa,* 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

1.a. The Examiner's assertion that the claims do not describe "page view response time", "embedded objects", or "simultaneous TCP connections"[2] is misplaced.

Appellants' claims recite collecting data from networking and application layers.[3] Appellants define networking layer data and application layer data in the specification.[4] This data is defined as including, for example, page view response times, embedded objects, or simultaneous TCP connections. Application layer data collection systems periodically access a targeted web application and measure its response time.[5] Network layer data collection systems collect packet traces, i.e., details of packets going to and from the web server, and then an attempt is made to infer client perceived response time.[6] "Networking layer data" and "application layer data" must not be read in a vacuum, and must be read in light of the specification. The descriptions of "networking layer data" and "application layer data" must be read in light of the specification.

Thus, "page view response time", "embedded objects", and "simultaneous TCP connections" are not limitations being read into the claims, but are terms used to describe recitations of the claims.

1.b. In addition, the Examiner's assertion that the claims do not describe "server side measurements"[7] is also misplaced.

Appellants' claims recite the estimating of a perceived client response time of a web

[2] See Examiner's Answer at page 6, item A.
[3] E.g. see Claim 1.
[4] See Specification at pages 7-9.
[5] See Specification at pages 1-2.
[6] See Specification at page 2.
[7] See Examiner's Answer at page 8, item C.

server. The processes recited in the claims occur in the web server.[8] In particular, the placing, collecting and combining of correlation tags and the calculation of the client perceived response times (i.e. measurements) are performed in the web server (server side). The term "server side measurements" accurately describes those processes recited in the claims. Therefore, the claims do in fact describe server side measurements (i.e. measurements that occur in the web server).

Thus, "server side measurements" is not a limitation being read into the claims, but is a term used to describe recitations of the claims.

1.c. Further, the Examiner's assertion that the claims do not describe "page view download model performed at the server side"[9] is also misplaced.

Appellants' claims calculate a client perceived response time of the web server. The present application provides a model for a page view download that is performed at the server side. By definition, a web server is located at the server side of a web page request.[10] The present invention utilizes correlation tags present in networking and application layer data to correlate the data corresponding to a single HTTP request and further to correlate data corresponding to a single web session or web page download.[11] By definition, the perceived client response time can be described as the time to download a web page.

A page view download model performed at the server side accurately describes that which is recited in the claims.

Thus, "page view download model performed at the server side" is not a limitation being read into the claims, but is a term used to describe recitations of the claims.

2. Fraenkel does not teach or disclose tagging at either the network or application layers

The Examiner disagrees with the Appellants' position that Fraenkel does not teach or disclose the placement of correlation tags to later identify a single web event.[12]

The correlation tags of the claims of the present application are entries in the web log and

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[8] See Specification at page 3.
[9] See Examiner's Answer at page 11, item G.
[10] See Specification at page 5.
[11] See Specification at page 7.
[12] See Examiner's Answer at page 7, item B, and at page 9, item E.

network layer log that identify an HTTP request.[13] The correlation tags are unique to an HTTP request and tag data at both layers.[14] Data entries in the networking and application layers that correspond to each other and belong to the same HTTP request can be identified, the raw data streams from the networking and application layers can be examined, and all data entries belonging to the same web page or the same web session can be collected.

The Examiner cites paragraphs [0008], [0012], [0019], [0020] and [0130]-[0133] in an attempt to support the rejection.[15] Paragraph [0008] relates the problems in Fraenkel's prior art; no mention of correlation tags, or any tagging at all, is present. Paragraph [0012] relates to the simulation performed by the agent computers of Fraenkel's invention; again, no mention of correlation tags, or any tagging at all, is present. Paragraph [0019] relates to the measurement of time durations of Fraenkel's invention; yet again, no mention of correlation tags, or any tagging at all, is present. Paragraph [0020] relates to the measurement of response times of Fraenkel's invention; still yet again, no mention of correlation tags, or any tagging at all, is present. Paragraphs [0130]-[0133] relate to the capture and storage of screen images of Fraenkel's invention; and again, no mention of correlation tags, or any tagging at all, is present. Fraenkel does not teach or disclose the placement of correlation tags to later identify a single web event.

Thus, the Examiner's assertion that Fraenkel discloses the placement of correlation tags to later identify a single web event is incorrect.

3. Fraenkel does not teach or disclose measurements performed in a web server (i.e. server side measurements)

The Examiner asserts the measurements taught by Fraenkel are performed by a web server.[16] The Examiner is incorrect in his assertion.

As detailed above, the processes recited in the claims of the present application are performed in the web server, i.e. are server side processes. The web server is the entity from which the actual web page is downloaded or the actual entity with which a web session is

[13] See Specification at page 7.
[14] See Specification at page 6.
[15] See Examiner's Answer at page 7, item B, and at pages 9-10, item E.
[16] See Examiner's Answer at page 8, item C.

conducted by a client.[17]

Fraenkel discloses in paragraph [0020] that a server agent component (not the server itself) monitors server resources. "The server agent component is preferably located local to the monitored transactional server."[18] Thus, the server agent component of Fraenkel is a distinct element from its transactional server.

Thus, the server agent component is not and cannot be equated with the web server of the claims of the present application.

4. Fraenkel does not teach or disclose measuring response times for actual client as Fraenkel measures response times for monitoring agents

The Examiner disagrees that Fraenkel teaches measuring response times for monitoring agents and does not teach measuring response times for actual clients.[19]

The claims of the present application recite web servers performing the operations further recited in the claims. The operations are performed on the actual data of the application and network layers.

The Examiner actually supports Appellants' position in stating, "Fraenkel discloses ***agents*** on client machines ***simulating*** the actions of actual users (including the computers of actual end users) of the transactional server while monitoring and reporting the server's performance [paragraph 12]."[20] (Emphasis added.)

Thus, agents that simulate actions are not and cannot be equated with actual web servers that measure response times for actual clients.

5. Conclusion

As the Examiner has failed to make out a prima facie case for an anticipation rejection, the rejection of Claims 1-10, 12 and 13 must be reversed.

It is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

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[17] See Specification at page 5.
[18] See Fraenkel at paragraph [0020], pages 2-3.
[19] See Examiner's Answer at page 8, item D.
[20] See Examiner's Answer at page 9, item D.

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See also M.P.E.P. §2131.

The Examiner has failed to show that each and every element of Claims 1-10, 12 and 13 are found in Fraenkel. Accordingly, the Examiner has failed to make out a prima facie case for an anticipation rejection.

Independent Claims 1, 4, 12 and 13 are not anticipated by Fraenkel. Therefore, the rejections of Claims 1-10, 12 and 13 must be reversed.

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